

## Federal Communications Commission

DA 00-773

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Federal-State Joint Board on  
Universal Service

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CC Docket No. 96-45

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## INTERIM PROTECTIVE ORDER

Adopted: April 7, 2000

Released: April 7, 2000

By the Deputy Chief, Common Carrier Bureau:

1. In the *Universal Service Order*, the Commission established, as one of the criteria in developing a forward-looking economic cost model to determine universal service support, that "all underlying data, formulae, computations, and software associated with the model should be available to all interested parties for review and comment."<sup>1</sup> This Interim Protective Order is intended to facilitate and expedite review of line count data at the wire center level submitted pursuant to sections 36.611, 36.612, and 54.307 of the Commission's rules for wire centers not receiving high-cost universal service support.<sup>2</sup> Several carriers submitting such information have sought confidential treatment of these data pursuant to section 0.459 of the Commission's rules.<sup>3</sup> The "Confidential Line Count Information," as that term is defined herein, shall be subject to the terms of this Interim Protective Order until a final determination by the Commission on the manner in which such information is to be treated. This Interim Protective Order does not constitute a resolution of the merits concerning whether any Confidential Line Count Information would be released publicly by the Commission upon a proper request under the

<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8915 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999), *motion for stay granted in part*, (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied*, (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds).

<sup>2</sup> 47 C.F.R. §§ 36.611, 36.612, 54.307. In an order released today, the Commission denied in part requests by certain carriers for confidential treatment of these data to the limited extent that the number of lines in wire centers receiving high-cost universal service support may be determined through the Commission's publication of statewide forward-looking support amounts, carrier-by-carrier hold-harmless support amounts, and per-line support amounts available in a wire center. *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 00-125, at n. 19 (rel. April 7, 2000) (*Line Count Confidentiality Order*).

<sup>3</sup> See 47 C.F.R. § 0.459; *Line Count Confidentiality Order*. Anchorage Telephone Utility, Bell Atlantic, BellSouth, GTE, SBC (including Ameritech), Sprint, and U S West requested confidential treatment of the data

Freedom of Information Act or other applicable law or regulation, including section 0.442 of the Commission's rules.<sup>4</sup>

2. Definitions.

a. Authorized Representative. An "Authorized Representative" is limited to:

- (1) Counsel for the Reviewing Parties, including in-house counsel and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services by counsel for the Reviewing Parties.
- (2) Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service or otherwise engaged to prepare material for the express purpose of formulating filings in this docket, except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall be prohibited.
- (3) Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

b. Commission. "Commission" means the Federal Communications Commission or any employee, consultant, or agent of the Commission acting pursuant to, and within the scope of, their official responsibilities to the Commission.

c. Confidential Line Count Information. "Confidential Line Count Information" means (i) data concerning the number of working loops per wire center submitted by the Submitting Party pursuant to sections 36.611, 36.612, and 54.307 of the Commission's rules, 47 C.F.R. §§ 36.611, 36.612, 54.307, for those wire centers not receiving high-cost universal service support,<sup>5</sup> which the Submitting Party has determined in good faith constitutes trade secrets and commercial or financial information that is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and that has been so designated by the Submitting Party, and (ii) data concerning the number of working loops per wire center submitted by the Submitting Party pursuant to sections 36.611, 36.612, 54.307 of the Commission's rules, 47 C.F.R. §§ 36.611, 36.612, 54.307, for those wire centers not receiving high-cost universal service support,<sup>6</sup> which the Submitting Party has

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<sup>4</sup> 47 C.F.R. § 0.442.

<sup>5</sup> See *supra* note 1.

<sup>6</sup> See *supra* note 1.

determined in good faith falls within the terms of Commission orders designating the items for treatment as confidential information, and that has been so designated by the Submitting Party. Confidential Line Count Information includes additional copies of notes and information derived from Confidential Line Count Information.

d. Declaration. "Declaration" means Attachment A to this Interim Protective Order.

e. Reviewing Party. "Reviewing Party" means a person or entity reviewing or seeking in good faith to review Confidential Line Count Information only for the purpose of reviewing the underlying information and verifying the results of the forward-looking cost mechanism.

f. Submitting Party. "Submitting Party" means a person or entity that submits information for which it seeks treatment as Confidential Line Count Information pursuant to this Interim Protective Order.

3. Claim of Confidentiality. The Submitting Party may designate information as Confidential Line Count Information consistent with the definition of that term in paragraph 2 of this Interim Protective Order. The Commission may, sua sponte or upon petition, pursuant to 47 C.F.R §§ 0.459 & 0.461, determine that all or part of the information claimed as Confidential Line Count Information is not entitled to such treatment. Each paper copy or computer disk, or relevant portion thereof, of any information furnished subject to the terms of this Interim Protective Order shall be clearly identified as "Confidential" by the Submitting Party.

4. Procedures for Claiming Line Count Information is Confidential. Confidential Line Count Information submitted pursuant to sections 36.611, 36.612, and 54.307 of the Commission's rules shall be filed under seal and shall bear on the front page or on the computer disk in bold print, "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Line Count Information shall be segregated by the Submitting Party from all non-confidential information submitted pursuant to these rule sections. To the extent a document contains both Confidential Line Count Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Line Count Information and shall, where feasible, also submit a redacted version not containing Confidential Line Count Information.

5. Storage of Confidential Line Count Information at the Universal Service Administrative Company (USAC). Staff of the National Exchange Carriers Association (NECA) and the Universal Service Administrative Company (USAC) to whom Confidential Line Count Information is submitted shall place the Confidential Line Count Information in a non-public file. Confidential Line Count Information shall be segregated in the files of NECA and USAC, and shall be withheld from inspection by any person not bound by the terms of this Interim Protective Order, unless such Confidential Line Count Information is released from the restrictions of this Interim Protective Order either through agreement of the parties, or pursuant to an order of the Commission or a court having jurisdiction. Inspection of Confidential Line

Count Information by parties other than Commission staff, NECA staff, or USAC staff shall occur pursuant to paragraph 8 of this Interim Protective Order and not on the premises of the Commission's offices.

6. Access to Confidential Line Count Information. Confidential Line Count Information shall only be made available to the Commission, to staff of NECA, to staff of USAC, and to Authorized Representatives of the Reviewing Parties. Before any Authorized Representative of a Reviewing Party may obtain access to Confidential Line Count Information, such Authorized Representative must execute the attached Declaration. The Reviewing Party shall not be deemed, by reason of this Interim Protective Order, to have waived the opportunity to argue before the Commission or any other appropriate body that any Confidential Line Count Information is not confidential or privileged in nature. Consultants of the Commission under contract to the Commission may obtain access to Confidential Line Count Information only if they have signed a non-disclosure agreement or if they execute the attached Declaration.

7. Permissible Disclosure. An Authorized Representative of a Reviewing Party may disclose Confidential Line Count Information to other Authorized Representatives, as defined in paragraph 2 of this Interim Protective Order, only after advising such Authorized Representatives of the terms and obligations of the Interim Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Line Count Information, each Authorized Representative must execute the attached Declaration.

8. Inspection of Confidential Line Count Information. Confidential Line Count Information shall be maintained by USAC for inspection at its headquarters consistent with the terms of this Interim Protective Order. An Authorized Representative shall give all Submitting Parties who have submitted Confidential Line Count Information to the Commission reasonable notice of its intent to review Confidential Line Count Information.

9. Copies of Confidential Line Count Information. USAC shall provide to any Authorized Representative, on request, a copy of the Confidential Line Count Information and may charge a reasonable copying fee. Authorized Representatives may, upon obtaining the permission of a Submitting Party, make additional copies of Confidential Line Count Information submitted by that Submitting Party, but only to the extent required and solely for the use of such Confidential Line Count Information for the purposes identified in paragraph 11 of this Interim Protective Order. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of Confidential Line Count Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Line Count Information shall keep the documents properly secured at all times.

10. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Commission and to any Submitting Parties who have submitted Confidential Line Count Information to the Commission a copy of the attached Declaration for each Authorized Representative within five business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

11. Use of Confidential Line Count Information. Reviewing Parties shall use the Confidential Line Count Information only for the purpose of reviewing the underlying information and verifying the results of the forward-looking cost mechanism. Confidential Line Count Information shall not be used by any person granted access under this Interim Protective Order for any other purpose, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Interim Protective Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Line Count Information nor otherwise learned of its contents.

12. No patent, copyright, trademark or other intellectual property rights are licensed, granted, or otherwise transferred by this Interim Protective Order or any disclosure hereunder, except for the right to use information in accordance with this Interim Protective Order. Confidential Line Count Information shall at all times remain the property of the Submitting Party. Confidential Line Count Information that is properly obtained by the Reviewing Party, however, may be used to conduct its own analyses using the Confidential Line Count Information. Moreover, any such calculations or other analyses performed by the Reviewing Party using Confidential Line Count Information, the outcomes of which do not reveal protected information, shall not be considered part of the Confidential Line Count Information nor shall said calculations and analyses be the property of the Submitting Party. However, a Reviewing Party's calculations, analyses or other derivative materials, the contents or outcomes of which do reveal protected information, shall be used and treated by the Reviewing Party in the same fashion as the underlying Confidential Line Count Information used in such calculations, analyses and derivative materials under the terms of paragraphs 6, 7, 8, 9, and 11.

13. Pleadings Using Confidential Line Count Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this docket, refer to Confidential Line Count Information, but only if they comply with the following procedures:

- a. Any portions of the pleadings that contain or disclose Confidential Line Count Information must be physically segregated from the remainder of the pleadings and filed under seal;
- b. The portions containing or disclosing Confidential Line Count Information must be covered by a separate letter referring to this Interim Protective Order;
- c. Each page or portion of any Party's filing that contains or discloses Confidential Line Count Information subject to this Interim Protective Order must be clearly marked: "Confidential Line Count Information included pursuant to Interim Protective Order, CC Docket No. 96-45;" and
- d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party who submitted that Confidential Line Count Information, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the

Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party who submitted that Confidential Line Count Information and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Line Count Information shall also file a redacted copy of the pleading containing no Confidential Line Count Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Line Count Information to Commission staff so long as the notation required by subsection (c) of this paragraph is not removed.

14. Violations of Interim Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Line Count Information under this Interim Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to any Submitting Party who submitted any portion of that Confidential Line Count Information. Further, should such violation consist of improper disclosure or use of Confidential Line Count Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Commission and Submitting Parties who have submitted any portion of that Confidential Line Count Information, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Line Count Information through any such disclosure, and identify with particularity the Confidential Line Count Information each such party obtained or is reasonably suspected to have obtained. The Commission retains its full authority to fashion appropriate sanctions for violations of this Interim Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Line Count Information. Nothing in this Interim Protective Order shall limit any other rights and remedies available to a Submitting Party at law or equity against any party using Confidential Line Count Information in a manner not authorized by this Interim Protective Order.

15. Return of Information. To the extent that the Confidential Line Count Information received by an Authorized Representative, as well as any copies or derivative materials made that reveal protected information, is no longer useful for the purposes set forth in paragraph 11 of this Interim Protective Order, such information shall be either returned to USAC, or destroyed by the Authorized Representative with notice given to USAC of such destruction.

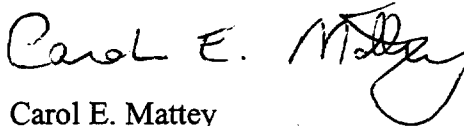
16. No Waiver of Confidentiality. Disclosure of Confidential Line Count Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Line Count Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any separate proceedings; and (c) agree that accidental disclosure of Confidential Line Count Information shall not be deemed a waiver of the privilege.

17. Additional Rights Preserved. The entry of this Interim Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Line Count Information.

18. Effect of Interim Protective Order. This Interim Protective Order constitutes an Order of the Commission and an agreement between every Reviewing Party executing the attached Declaration, and every Submitting Party.

19. Authority. This Interim Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j), and 47 C.F.R. §§ 0.91, 0.291, and 0.457(d).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Carol E. Matthey", is written over the printed name.

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

**ATTACHMENT A:****DECLARATION**

In the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45).

I, \_\_\_\_\_, hereby declare under penalty of perjury that I have read the Interim Protective Order that has been entered by the Common Carrier Bureau in this docket, and that I agree to be bound by its terms pertaining to the treatment of Confidential Line Count Information submitted by parties pursuant to sections 36.611, 36.612, and 54.307 of the Commission's rules, 47 C.F.R. §§ 36.611, 36.612, 54.307. I understand that the Confidential Line Count Information shall not be disclosed to anyone except in accordance with the terms of the Interim Protective Order and shall be used only for purposes specified in the Interim Protective Order. I acknowledge that a violation of the Interim Protective Order is a violation of an order of the Common Carrier Bureau. I acknowledge that this Interim Protective Order is also a binding agreement with every Submitting Party.

(signed) \_\_\_\_\_  
(printed name) \_\_\_\_\_  
(representing) \_\_\_\_\_  
(title) \_\_\_\_\_  
(employer) \_\_\_\_\_  
(address) \_\_\_\_\_  
(phone) \_\_\_\_\_  
(date) \_\_\_\_\_